APPEAL NO. 031142
FILED JUNE 26, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing was held on April 15, 2003. The hearing officer determined that the respondent's (claimant) _____, compensable injury extends to his head and neck, and that he had disability from July 20, 2001, through May 7, 2002. The appellant (self-insured) appeals these determinations and, additionally, asserts that the hearing officer erred in admitting the claimant's documentary evidence and in refusing to consider the issue of whether the claimant had good cause for failing to attend required medical examination (RME) appointments. The claimant urges affirmance of the hearing officer's decision and contends that the hearing officer did not err in admitting his documentary evidence or in refusing to consider the issue relating to the RME appointments.

DECISION

Affirmed.

The self-insured argues that the hearing officer erred in admitting Claimant's Exhibit Nos. 1-5 because the self-insured "never received an original exchange from opposing counsel." We note that the self-insured initially objected to all of the claimant's documentary evidence; however, upon further discussion, clarification, and review of the evidence, the self-insured objected to only Exhibit Nos. 1 and 2. The record is clear that the self-insured ultimately did not object to Exhibit Nos. 3-5 and, therefore, waived its right to do so. With regard to Claimant's Exhibit Nos. 1 and 2, which were objected to, the self-inured argued at the hearing that portions of these exhibits were not timely exchanged. The claimant's attorney explained at the hearing that all of the pages contained in these exhibits were timely exchanged in compliance with Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 142.13(c) (Rule 142.13(c)) and provided the hearing officer with additional information from the file regarding when and where the information was sent. The hearing officer was persuaded that the information contained in Exhibit Nos. 1 and 2 had been timely exchanged and the evidence was admitted. Based on these facts, we perceive no error in the admission of the exhibits in question and note that, contrary to the self-insured's contention, we are not aware of any requirement in the 1989 Act or in the Texas Workers' Compensation Commission's rules which require a party to prove that evidence was timely exchanged via a certified mail "green card."

The hearing officer did not err in refusing to consider the issue of whether the claimant had good cause for failure to attend RME appointments. The self-insured contends that this "sub-issue was critical to the determination of whether the claimant had disability" and that the "issue regarding good cause was raised by the claimant and tried by mutual consent of the parties." We note that there is no evidence supporting the contention that the "issue regarding good cause was raised by the claimant and

tried by mutual consent of the parties." Furthermore, we note that the "good cause" issue is not a "sub-issue" of disability. To the contrary, whether the claimant had disability and whether the self-insured was entitled to suspend payment of benefits due to the alleged failure of the claimant to attend RME appointments are distinct issues and the resolution of the latter is not dispositive of the disability issue. Disability may exist separately from entitlement to temporary income benefits. Texas Workers' Compensation Commission Appeal No. 950879, decided July 17, 1995. As there is no indication that the self-insured ever requested that the issue be added, we cannot agree that the hearing officer erred in failing to add the issue.

Extent of injury and disability were factual questions for the hearing officer to resolve. With regard to the disability issue, the self-insured contends that the only evidence supporting the disability finding was an off-work slip, which documented that as of July 20, 2001, the claimant could not return to work. However, there was testimony from the claimant regarding the disability issue and a disability determination can be established by the claimant's testimony alone, if believed by the hearing officer. Gee v. Liberty Mut. Fire Ins. Co., 765 S.W.2d 394 (Tex. 1989). The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established from the evidence presented. Nothing in our review of the record indicates that the hearing officer's decision is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **(a certified self-insured)** and the name and address of its registered agent for service of process is

CORPORATION
(ADDRESS)
(CITY), TEXAS (ZIP CODE).

_____
Chris Cowan
Appeals Judge

CONCUR:

_____
Thomas A. Knapp
Appeals Judge

_____
Margaret L. Turner
Appeals Judge